

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY HAMILTON,

Petitioner,

No. 04-CV-74164-DT

vs.

Hon. Gerald E. Rosen

DOUGLAS C. VASBINDER,

Respondent.

ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AND
DISMISSING PLAINTIFF'S HABEAS CORPUS ACTION

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on October 17, 2006

PRESENT: Honorable Gerald E. Rosen
United States District Judge

This matter having come before the Court on the August 24, 2006 Report and Recommendation of United States Magistrate Judge Mona K. Majzoub recommending that the Court dismiss Timothy Hamilton's petition for a writ of habeas corpus, without prejudice, because of his failure to exhaust his state remedies; and Petitioner having timely filed Objections to the Report and Recommendation; and the Court having reviewed the Magistrate Judge's Report and Recommendation, the Objections thereto, and the Court's file of this action and having concluded that, for the reasons stated in the Report and Recommendation, the petition for habeas corpus relief should be dismissed; and the Court being otherwise fully advised in the premises,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation of August 24, 2006 be, and hereby is, adopted by this Court.

IT IS FURTHER ORDERED that, for the reasons set forth in the Magistrate Judge's Report and Recommendation, Timothy Hamilton's petition for habeas corpus relief be, and hereby is DISMISSED, without prejudice, because of Petitioner's failure to exhaust his state remedies..

IT IS FURTHER ORDERED that, for the reasons stated by the Magistrate Judge, pursuant to 28 U.S.C. § 2243(c), no certificate of appealability should issue for purposes of appeal of this matter. The Court will also deny Petitioner leave to appeal *in forma pauperis*. A habeas petitioner seeking to appeal the denial of a habeas petition will not be permitted to proceed *in forma pauperis*, where the appeal would be frivolous. *Hence v. Smith*, 49 F. Supp. 2d 547, 549 (E.D. Mich. 1999).

s/Gerald E. Rosen
Gerald E. Rosen
United States District Judge

Dated: October 17, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 17, 2006, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager